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26 UNITED STATES DISTRICT COURT  
 27 NORTHERN DISTRICT OF CALIFORNIA  
 28 SAN FRANCISCO DIVISION

29 BRIAN MANNING,

30 No. 3:08-cv-00238-JSW

31 Plaintiff,

32 JOINT CASE MANAGEMENT  
 33 STATEMENT AND [PROPOSED] ORDER

34 vs.

35 Date: May 9, 2008  
 36 Time: 1:30 p.m.  
 37 Place: Courtroom 2, 17<sup>th</sup> Floor  
 38 Before: Hon. Jeffrey S. White

39 ALLSTATE INSURANCE COMPANY,

40 and DOES 1-30, Inclusive,

41 Defendants.

42 Pursuant to Federal Rule of Civil Procedure 26(f) and Civil L.R. 16-9(a), the parties to  
 43 the above-titled action submit this Joint Case Management Statement and Proposed Order with  
 44 respect to the Case Management Conference set for May 9, 2008, and request that the Court  
 45 adopt it as the Case Management Order.

1           **1. Jurisdiction and Service:**

2           This Court has exclusive original jurisdiction over the Superior Court Action pursuant to  
3          42 U.S.C. § 4072. This Court also has jurisdiction under 28 U.S.C. §§ 1331, 1332, and 1337.  
4          Plaintiff and Allstate Insurance Company (“Allstate”) are citizens of different states and the  
5          amount in controversy exceeds \$75,000, exclusive of interest and costs.

6           There are no issues regarding personal jurisdiction and venue. All parties have been  
7          served.

8           **2. Facts:**

9          Allstate issued a National Flood Insurance Program (NFIP) Standard Flood Insurance  
10         Policy (SFIP) to Brian Manning for the property commonly identified as 13225 S. Highway 101  
11         in Hopland, County of Mendocino. On December 31, 2005, the property was damaged by or  
12         from flood. Plaintiff made a claim under his SFIP for the date of loss at issue. In March 2006,  
13         Allstate paid the Plaintiff approximately \$123,154.69. Thereafter, Plaintiff made a claim for  
14         further benefits under his SFIP on or about May 9, 2006. On February 1, 2007, Allstate paid  
15         \$31,956.02 in additional benefits under the SFIP.

16          On April 9, 2007, plaintiff submitted another supplemental claim. Allstate requested  
17         detailed supporting documentation, but did not receive any, so no further payments were made.  
18         Allstate closed its file in October 2007.

19          Plaintiff alleges he has provided all the additional documentation necessary to receive the  
20         additional benefits he claims. Plaintiff sues Allstate for “breach of contract” seeking special,  
21         general, and consequential damages, attorneys fees, and costs of suit.

22          Plaintiff contends Allstate has not paid all benefits due under the policy. Allstate  
23         contends it paid plaintiff all benefits due under the policy.

24           **3. Legal Issues:**

25          One or more party contends the following legal issues are in dispute:

- 26           1. Whether Allstate breached the policy?;
- 27           2. Whether Plaintiff breached the policy by failing to meet all necessary conditions  
28         precedent prior to filing suit?;

1           3. Whether plaintiff can state a valid claim against Allstate.

2           4. **Motions:**

3           Allstate moved to dismiss plaintiff's complaint or in the alternative, strike portions of the  
4           complaint on March 17, 2008. By stipulation dated April 2, 2008, plaintiff agreed to dismiss his  
5           second cause of action (for "bad faith") with prejudice and to file a First Amended Complaint no  
6           later than April 15, 2008 for breach of contract claims only.

7           Following discovery, Allstate intends to move for summary judgment.

8           5. **Amendment of Pleadings:**

9           Plaintiff filed his First Amended Complaint on April 11, 2008.

10          6. **Evidence Preservation:**

11          The parties have taken appropriate steps to ensure the preservation of evidence.

12          7. **Disclosures:**

13          The parties will serve their initial disclosure statements on or before May 9, 2008.

14          8. **Discovery:**

15          The parties plan to conduct discovery regarding all allegations in the complaint. The  
16          parties anticipate propounding written discovery and deposing the parties and other relevant  
17          witnesses. The parties do not believe any modification to the Federal Rules is necessary at this  
18          time and currently anticipate no dispute requiring the Court's intervention.

19          Plaintiff anticipates deposing the claim adjusters as well as serving requests for  
20          admissions and interrogatories.

21          Allstate anticipates deposing plaintiff, any expert(s) named by the Plaintiff, contractors  
22          who performed any repairs to the property and other third party witnesses who possess  
23          knowledge bearing on plaintiff's claim. Allstate also anticipates serving contention  
24          interrogatories and requests for admissions on plaintiff.

25          9. **Related Cases:**

26          There are no currently pending related cases.

1           **10. Relief:**

2           **Plaintiff's Statement**

3           Plaintiff's amended complaint seeks the unpaid benefits he contends are owed  
4           approximatey \$75,555.

5           **Defendant's Statement**

6           Allstate seeks judgment in its favor.

7           **11. Settlement and ADR:**

8           The parties have not filed a Stipulation and Proposed Order selecting an ADR process  
9           but the ADR process that the parties jointly request is: Early Neutral Evaluation.

10           **12. Consent to Magistrate:**

11           Allstate respectfully declined assignment of this action to a Magistrate Judge.

12           **13. Other References:**

13           The parties do not believe any other reference is necessary at this time.

14           **14. Narrowing of Issues:**

15           The parties believe it is premature to narrow the issues through stipulation at this time.  
16           However, as discovery progresses, the parties will re-evaluate this issue.

17           **15. Scheduling:**

18           The parties do not believe this case should be handled on an expedited basis. The parties  
19           propose the following schedule for discovery, motions and trial:

Exchange of Initial Disclosures:	Completed
FRCP 26(a)(2) expert disclosures:	December 12, 2008
FRCP 26(a)(2) rebuttal disclosures:	January 11, 2009
Non-expert discovery cut-off:	December 24, 2008
Expert Discovery cut-off:	January 23, 2009
Dispositive pre-trial motion filing cut-off:	February 6, 2009
Dispositive pre-trial motion hearing cut-off:	March 13, 2009
Pretrial conference statements:	March 24, 2009
Pretrial conference:	April 13, 2009

**16. Trial:**

The parties request a trial date of May 18, 2009.

#### **17. Disclosure of Non-Party Interested Entities or Persons:**

The parties are not aware of any interested parties required to be disclosed pursuant to Northern District Local Rule 3-16.

Dated: May 1, 2008

Respectfully submitted,  
SONNENSCHEIN NATH & ROSENTHAL LLP

By \_\_\_\_\_ /s/  
SONIA MARTIN

Attorneys for Defendant  
**ALLSTATE INSURANCE COMPANY**

Dated: May 1, 2008

Respectfully submitted,  
INSURANCE LITIGATORS & COUNSELORS

By \_\_\_\_\_ /s/  
JOSEPH JOHN TURRI

Attorneys for Plaintiff  
**BRIAN MANNING**

27293218

## [PROPOSED] ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

[The Court may wish to make additional orders as follows:

IT IS SO ORDERED.

Date: \_\_\_\_\_

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**Jeffrey S. White**  
United States District Court